BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	Preferred Medical Equipment, Inc. Personal Property Account No. P-158696 Tax year(s) 2004, 2005	)))	Shelby County

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued for tax purposes as follows:

TAX YEAR	APPRAISAL	ASSESSMENT
2004	$213,900	$64,170
2005	$180,200	$54,060

On August 3, 2005, the State Board of Equalization ("State Board") received appeals on behalf of Preferred Medical Equipment, Inc. ("PME"), a subsidiary of Orlando, Florida-based Rotech Healthcare, Inc. ("Rotech").[1]

The undersigned administrative judge conducted a hearing of this matter on November 17, 2005 in Memphis. PME was represented by Rotech's Vice President of Tax, Kevin Walsh, and Corporate Tax Manager Kristel Robison. Assistant Shelby County Attorney Thomas Williams and Gwendolyn Cranshaw, CPA, Director of Finance in the Shelby County Property Assessor's office, appeared on the Assessor's behalf.

Ms. Cranshaw moved to dismiss the appeal for tax year 2004 on the ground that it was untimely.

Findings of Fact and Conclusions of Law

Background. Under the peculiar law of this state, leased personal property is "classified according to the lessee's use and assessed to the lessee." Tenn. Code Ann. section 67-5-502(c). This is another in a series of appeals to the State Board that raise the issue of whether tangible personal property is truly "leased" (or held for lease) so as not to be assessable to the owner. *See*, e.g., Nissan North America, Inc. v. Haislip, *et al.*, No. M2003-00813-COA-R3-CV (Tenn. Ct. App. May 14, 2004).

PME, a supplier of home medical equipment, maintains an office at 2093 Thomas Road in Memphis. In tax year 2004, the company timely completed and returned to the Assessor's office the tangible personal property schedule required by Tenn. Code Ann. section 67-5-903. On or about September 30, 2004, PME filed an amended rendition for that year which reflected

[1]The mailed appeal forms are deemed to have been filed on the postmark date of July 29, 2005. State Board Rule 0600-1-.04(1)(b).

the deletion of certain medical equipment purportedly leased (or held for lease) by the company to patients.

In a letter dated November 18, 2004, Ms. Cranshaw explained her rejection of the amended schedule as follows:

> Preferred Medical Equipment does not appear to lose control of the medical equipment delivered to patients. The equipment is prescribed by doctors and is also serviced and monitored by this company. The equipment is returned the company [*sic*] after the patients complete their prescribed treatments....

This letter, which included a statement of the taxpayer's right to appeal "directly to the State Board of Equalization within forty-five (45) days of the date of this notice," was sent to the address shown on PME's amended personal property schedule (Medical Electro-Therapeutics, Inc., Tax Dept/Corp# 607310, PO Box 536576, Orlando, FL 32853-6576). But according to PME's representatives, the company never received the *original* of Ms. Cranshaw's letter. Not until a *copy* was "faxed" to Ms. Robison on July 18, 2005, Mr. Walsh testified, did PME learn of the Assessor's rejection of its amended schedule.

PME appealed the Assessor's valuation of the subject property for tax year 2005 to the Shelby County Board of Equalization. Although it did reduce the amount of the forced assessment, the county board deemed the items allegedly leased (or held for lease) to be assessable to the company.

PME's standard rental/purchase agreement form (called a "delivery ticket") contains the following key terms:

> a. I understand that the equipment rented under this agreement remains the property of the Company. I agree to return rented equipment in the same condition as it was when I received it, subject to normal wear and tear. I understand that title to the equipment does not transfer to me until the Company has received payment in full.
>
> b. I agree to promptly notify the Company if my address changes or if I no longer need the equipment. I also agree to promptly notify the Company if I am admitted to a nursing home or hospice.
>
> c. The Company agrees to replace or repair defective equipment in a timely manner. I agree to notify the Company as soon as possible of any equipment malfunction or defect. The Company is not responsible for any incidental or consequential damage cause by my failure to timely notify the Company of any malfunction or defect.

Contentions of the Parties on the Merits. Though not explicitly articulated in Ms. Cranshaw's letter of November 18, 2004, the Assessor's position apparently is that the medical equipment in question is used by PME in the conduct of its business albeit placed on location in the homes of its customers. PME is not subject to the Business Tax Act, Mr. Williams argued in his post-hearing brief, because the company furnishes "medical, dental, and allied health

services to human beings" within the meaning of Tenn. Code Ann. section 67-4-708(3)(C)(i).[2] In his view, any gross receipts tax payments heretofore made by PME were purely "voluntary."

PME, of course, maintains that the disputed items are rented to the patients whose physicians have ordered them. In his response to Mr. Williams' brief, Mr. Walsh categorically denied that the company is a healthcare "service provider."

Applicable Law. The reporting and assessment of tangible personal property in this state are governed by Tenn. Code Ann. sections 67-5-901 *et seq*. Section 67-5-903(e) provides (in relevant part) that:

> The taxpayer may amend a personal property schedule previously filed with the assessor at any time until September 1 following the tax year. If the assessor agrees with the amended schedule, the assessor shall thereupon revise the assessment and certify the revised assessment to the trustee. If the assessor believes the assessment should be otherwise than claimed in the amended schedule, the assessor shall adjust the assessment and give written notice to the taxpayer of the adjusted assessment. The taxpayer may appeal the assessor's adjustment of or refusal to accept an amended assessment schedule to the local and state boards of equalization **in the manner otherwise provided by law**...[Emphasis added.]

Tenn. Code Ann. section 67-5-901(b) defines *inventories of merchandise held by merchants and businesses for sale and exchange* to include "tangible personal property held for sale or rental, but...not...such property in the possession of a lessee." Consistent with Article II, section 28 of the Tennessee Constitution, the state legislature has expressed the intent that inventories held by persons taxable under the Business Tax Act not be subject to property taxation.[3] Tenn. Code Ann. section 67-4-701(b). *See* Dixie Rents, Inc. v. City of Memphis, 594 S.W.2d 397 (Tenn. Ct. App. 1979). Section 67-4-702(9) of the Business Tax Act defines "lease or rental" as "the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title of such property."

Analysis.

Motion to Dismiss (2004). The quoted portion of Tenn. Code Ann. section 67-5-903(e) is somewhat confounding in two respects. If an assessor disagrees with the value requested in an amended personal property schedule, the statute requires the assessor to "adjust the assessment and give written notice to the taxpayer of the adjusted assessment." But where, as here, the assessor stands on the original value, he/she does not really "adjust" the assessment at all. Secondly, the law does not spell out the duration of the taxpayer's right of

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[2]*See* Memphis Kidney & Dialysis Services, North (Shelby County, Tax Years 1997 & 1998, Initial Decision and Order, March 17, 2003), appeal to Assessment Appeals Commission pending.

[3]Section 67-4-702(8) of the Business Tax Act contains a substantially identical definition of "inventories of merchandise held for sale or exchange."

appeal from a so-called "adjusted assessment" notice sent *after* the adjournment of the local board of equalization for the tax year in controversy.

That said, the Assessor's office did all that was legally necessary in sending its rejection letter to PME's correct address. Contrary to Mr. Walsh's insistence, Tenn. Code Ann. section 67-5-903(e) does not require the Assessor to notify the taxpayer of a refusal to accept an amended personal property schedule by certified mail. Neither, for that matter, does Tenn. Code Ann. section 67-5-508 mandate that a taxpayer be so notified of any *change* of classification and/or assessment. There is no reason to suppose that a taxpayer (such as PME) whose assessment has not been changed at all would be entitled to more protection than a taxpayer whose assessment has been increased.

Even if an assessor's rejection of an amended personal property schedule were likened more to a failure or refusal to correct a clerical error (under Tenn. Code Ann. section 67-5-509) than to an assessment change notice (under Tenn. Code Ann. sections 67-5-508 and 67-5-1412(e)), the taxpayer's right of appeal would extend no longer than 75 days from the date of submission of the request for correction.[4] PME's appeal was received some *ten months* after the filing of its amended schedule. In Mr. Walsh's own words, the company "simply assumed the claim had been accepted" and "did not aggressively follow up on the matter."

It follows that the Assessor's motion to dismiss PME's 2004 appeal must be granted.

Tax Year 2005. In support of his assertion that PME is a service provider, Mr. Williams has cited certain provisions of state law concerning the regulation of health facilities. Yet "sales of tangible personal property" are specifically excluded from the definition of *services* in the Business Tax Act itself. Tenn. Code Ann. section 67-4-702(a)(19). While PME's standard delivery ticket form does refer to "products and/or services," nothing else in the record indicates that the company's operations at this location extend beyond the supply of medical equipment. In fact, PME is licensed as a "home medical equipment company" by the Tennessee Department of Health.

Further, the administrative judge does not consider any of the quoted terms of the rental agreement to be inconsistent with a true lease. PME's obligation to repair or replace any defective equipment surely does not defeat the claim of rental; nor does the company appear to "monitor" this property in the manner of the installer of security equipment in Sonitrol of Memphis, Inc. (Shelby County, Tax Years 1996—1998, Initial Decision and Order, August 4, 2000). The administrative judge does not read the agreement as leaving "control" of the delivered medical equipment in the hands of PME. Finally, the fact that such equipment may be relinquished at the conclusion of the prescribed treatment hardly precludes the existence of a lessor/lessee relationship between PME and its customers.

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[4]Under Tenn. Code Ann. section 67-5-509(e), a request for correction of an alleged assessment error is deemed to have been denied if the assessor has not responded within 30 days. The aggrieved taxpayer would then have a 45-day right of appeal to the State Board.

Order

It is, therefore, ORDERED that the taxpayer's appeal for tax year 2004 be dismissed. It is further ORDERED that the following values be adopted for tax year 2005:

APPRAISAL	ASSESSMENT
$61,700	$18,510

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 6th day of January, 2006.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Kevin Walsh, Vice President of Tax, Rotech Healthcare, Inc.
Gwendolyn T. Cranshaw, Director of Finance, Shelby County Assessor's Office
Rita Clark, Assessor of Property

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